

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE WACHOVIA TOWER
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9800

Scott Edward Cole, Esq. (S.B. #160744)
Matthew R. Bainer, Esq. (S.B. # 220972)
Carrie Lin, Esq. (S.B. #241849)
SCOTT COLE & ASSOCIATES, APC
1970 Broadway, Ninth Floor
Oakland, California 94612
Telephone: (510) 891-9800
Facsimile: (510) 891-7030
web: www.scalaw.com

Attorneys for Representative Plaintiff Robert
Runnings and the Plaintiff class

Don Edgar, Esq. (S.B. #139324)
Jeremy Fietz, Esq. (S.B. #200396)
THE EDGAR LAW FIRM
408 College Avenue
Santa Rosa, California 95401
Telephone: (707) 545-3200
Facsimile: (707) 587- 3040

Attorneys for Representative Plaintiffs John Hansen
and Miguel Cruz and the Plaintiff Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MIGUEL A. CRUZ and JOHN D.
HANSEN, individually, and on behalf
of all others similarly situated,

Plaintiffs,

vs.

DOLLAR TREE STORES, INC.

Defendant.

ROBERT RUNNINGS, et al.,

Plaintiff,

vs.

DOLLAR TREE STORES, INC.

Defendant.

Case No.: C-07-02050 SC

CLASS ACTION

**ROBERT RUNNINGS AND JOHN D.
HANSEN'S NON-OPPOSITION AND
REQUEST FOR HEARING ON
DEFENDANT'S MOTION FOR RELIEF**

Case No.: C-07-4012 SC (Consolidated Action)

CLASS ACTION

Trial Dates: No dates set

Date: TBD

Time: TBD

Judge: Hon. Samuel Conti

Courtroom: 1, 17th Floor

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Representative Plaintiffs respectfully submit this Statement of Non-Opposition, and Request for a Hearing/Teleconference on Defendant's Motion for Miscellaneous Relief. Indeed, Plaintiffs do not, as Defendant speculates, seek an "open-ended" briefing schedule on Defendant's Motions for Summary Judgment; Plaintiffs understand that Defendant has the right to file dispositive motions as it sees fit and, all things remaining equal, actually *prefers* getting a ruling on such motions out of the way at the earliest practicable time. Having said that, however, Plaintiffs' counsel feel it would be self-prejudicial to agree to file an Opposition to a motion that seeks not only to dismiss the claims of the named plaintiffs, but also threatens the putative class, *before discovery has even begun in earnest*.

While Plaintiffs' counsel does not object to the Court setting a briefing schedule for these dispositive motions, it does object to Defendant's attempts to *color* this dispute in a self-serving fashion. By way of background, it cannot be reasonably disputed that:

- Plaintiffs propounded discovery on Defendant well in advance of Defendant's Motion for Summary Judgment. *Exhibits A and B to the Declaration of Carrie S. Lin, Esq. In Support of Plaintiffs' Partial Opposition to Defendant's Motion Lin Decl.* ("Lin Decl.") *Lin Decl.*, ¶¶ 2-3.

- Defendant failed to provide complete responses to this discovery after requesting and being courteously granted *an extension of time* to respond thereto. One week prior to the new response date, Defendant filed its Motions for Summary Judgment. *Exhibit C to the Lin Decl., Lin Decl.* ¶ 4.

- Defendant's Motions for Summary Judgment *rely on the same class-wide discovery that has been heretofore withheld* from Plaintiffs during the discovery process. Specifically, Dollar Tree submitted a "summary" of putative class members' work related records, without even providing the names or contact information of the putative class members who had completed them. *Exhibit E to the Lin Decl., Lin Decl.* ¶ 6.

- Plaintiffs have not had an opportunity to compel supplemental discovery from Defendant, nor have they had the opportunity to take any depositions from Defendant with the benefit of written discovery. *Lin Decl.* ¶ 7.

• Plaintiffs' counsel has expressed these concerns to Defendant repeatedly. Defendant rejected these concerns, has kept the motions on calendar, has repeatedly insisted that Plaintiffs counsel commit to a briefing schedule *prior* to actual receipt of any supplemental discovery, and has rejected Plaintiffs' attorneys' proposal that the parties discuss these issues via a teleconference with the Court. In fact, after Plaintiffs' counsel, Scott Cole, coordinated a teleconference with Mr. Hernaez (Dollar Tree's attorney) and Jeremy Fietz (Plaintiff Hansen's counsel) on February 13, 2008, Mr. Hernaez, after threatening that he would just *rather file a motion*, ended the call by abruptly hanging up on Plaintiffs' counsel. *Lin Decl.* ¶ 8. These facts show an approach by Defendant's counsel that is a far cry from what is portrayed in the motion.

As explained above, while Plaintiffs' counsel will remain flexible to file their summary judgment Oppositions upon any reasonable timetable set by the Court, the potential prejudice to the named plaintiffs occasioned by the above-described events (which Plaintiffs' attorneys are happy to discuss further, should the Court agree that a hearing on the instant motion is warranted) should be kept in mind in setting those dates.

Dated: February 14, 2008.

Respectfully Submitted:

SCOTT COLE & ASSOCIATES, APC

By: /s/Carrie S. Lin
Carrie S. Lin, Esq.
Attorneys for Representative Plaintiff
Robert Runnings and the Plaintiff Class

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